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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 26th July, 1985:—

BILL No. 62 OF 1985

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1985.
2. In article 248 of the Constitution, for clause (1), the following clause shall be substituted, namely:—

Short title.

Amend-
ment of
article
248.

Resi-
duary
powers of
legisla-
tion.

Amend-
ment of
Seventh
Schedule.

“(1) Legislature of a State has exclusive power to make any law with respect to any matter not enumerated in the Union List or Concurrent List.”

3. In the Seventh Schedule to the Constitution,—

- (i) In List I—Union List, entry 97 shall be omitted; and
- (ii) In List II—State List, after entry 66, the following entry shall be added, namely:—

“67. Any other matter not enumerated in List I or List III including any tax not mentioned in either of those Lists.”

STATEMENT OF OBJECTS AND REASONS

Every one now admits that democratic restructuring of Centre-State relations is very important for strengthening the unity and integrity of the country.

Unfortunately, with the successive Constitutional amendments more and more powers have been taken away by the Centre from the States. This is not in keeping with the declarations made by the Indian National Congress while fighting for freedom and immediately thereafter.

The transfer of residuary powers from the Centre to the States will be in keeping with the present realities.

Hence this Bill.

NEW DELHI;
January 23, 1985.

GEETA MUKHERJEE

BILL No. 42 of 1985

A Bill further to amend the Constitution of India.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1985. Short title.
2. After article 326 of the Constitution, the following new article shall be inserted, namely:—

“326A. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of proportional representation, that is to say, the political parties which are contesting the elections shall be given seats in the respective bodies on the basis of the proportion of votes polled by them, and in the manner as may be decided by Parliament by law.”.

Insertion of new article 326A.

STATEMENT OF OBJECTS AND REASONS

The enactment of the Constitution (Fifty-second Amendment) Act, 1985 to penalise the defectors, is a welcome step. It once again shows that a thorough electoral reform is urgently needed. One of the most important points in this respect is to work out a system which really reflects the will of the electorate.

Our electoral system which follows the "first to pass the post" method, i.e., elects candidates on the basis of a simple majority of votes, does not always reflect the real will of the electorate, as a whole. For example, it has happened that a candidate, who contested in a multi-cornered contest has won with a very low percentage of votes. It has also happened that a party, which has lost most of the seats by narrow margin, has secured sizeable percentage of votes but remained practically unrepresented in the concerned legislature. This in reality is a distortion of peoples' verdict which can be remedied to a considerable extent by adopting the system of proportional representation.

Besides this, an election on the basis of proportional representation would help considerably to do away with the unhealthy influence of casteism, communalism, regionalism and such other dangerous trends. It would be relatively difficult for money-power also to influence the elections. This system would check the mushroom growth of splinter political parties and groups, besides eliminating the so called independents from the field of elections.

Hence this Bill seeks to amend the Constitution to introduce proportional representation in the elections.

NEW DELHI;

January 31, 1985.

GEETA MUKHERJEE

BILL NO. 66 OF 1985

A Bill further to amend the Constitution of India.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1985.	Short title.
2. In article 117 of the Constitution, clause (3) shall be omitted.	Amend- ment of article 117.
3. In article 207 of the Constitution, clause (3) shall be omitted.	Amend- ment of article 207.

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to omit clause (3) of article 117 and clause (3) of article 207 of the Constitution which provide for obtaining of the recommendation of the President/Governor for consideration of a Bill by either House of Parliament or of State Legislature, which if enacted and brought into operation would involve expenditure from the Consolidated Fund of India or of any State. Such recommendation is normally given even in case of a Bill sponsored by a Private member, so that discussion on a matter is not throttled on technical grounds. There is, therefore, hardly any justification for retention of such a provision in our Constitution.

Hence this Bill.

NEW DELHI;

MOOL CHAND DAGA

March 6, 1985.

BILL NO. 65 OF 1985

A Bill further to amend the Representation of the People Act, 1951.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Representation of the People (Amendment) Act, 1985. Short title.

43 of 1951. 2. Section 9A of the Representation of the People Act, 1951 shall be omitted. Omission of section 9A.

STATEMENT OF OBJECTS AND REASONS

Section 9A of the Representation of the People Act, 1951, prohibits a person having a contract with the Government from contesting an election for the membership of a Legislature. This disqualification was introduced in 1951. At that time, this disqualification existed in other legal systems of the world also. It has now been recognised that it is not in keeping with the democratic principles to keep a section of the society out of the legislative bodies, simply because they have contractual relations with the Government. The notion that after becoming a member of a Legislature a contractor will try to influence the Government has proved wrong. Therefore, this disqualification has been abolished in other countries also.

It is, therefore, desirable that this undesirable disqualification is removed.

Hence this Bill.

NEW DELHI;
March 8, 1985.

MOOL CHAND DAGA

BILL NO. 76 OF 1985

A Bill to provide for civil and criminal immunity to physicians and surgeons withdrawing life sustaining treatment from patients suffering from terminal illness and certain categories of newly-born infants.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Protection of Physicians and Surgeons (Civil and Criminal Immunity) Act, 1985.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "maintenance medical treatment" means artificial means or measures administered as medical or surgical treatment designed solely to sustain the life processes where there is no reasonable chance of recovery;

(b) "patient" means a person treated by a physician or surgeon for any illness, ailment, sickness that requires medical or surgical aid;

(c) "petitioner" means any person authorised by this Act to make a petition to the court for relief;

(d) "physician" and "surgeon" mean a person authorised to practice medicine or surgery respectively by or under the provisions of the Indian Medical Council Act, 1956 or any other law for the time being in force; 102 of 1956.

(e) "terminal illness" or "terminal injury" means any illness or injury which will in all probability result in the expiration of life, regardless of the use or discontinuance of medical or surgical treatment.

**With-
drawal of
main-
tenance
medical
treat-
ment on
request
and
exempt-
tion from
Civil
or
Criminal
liability.**

3. (1) Where a patient of sound mind suffering from a terminal illness or terminal injury calls upon his physician or surgeon, in writing, to withdraw maintenance medical treatment, the physician or surgeon may comply with such request of the patient provided the physician or surgeon is satisfied that the patient is suffering from a terminal illness or a terminal injury.

(2) Notwithstanding anything contained in any other law for the time being in force, where such physician or surgeon withdraws maintenance medical treatment under sub-section (1), he or she shall be free from any civil or criminal liability whatsoever.

**Declar-
ation for
with-
drawal of
main-
tenance
medical
treat-
ment.**

4. Any person of sound mind shall be entitled to make a declaration and give a power of attorney in the forms prescribed under this Act and duly executed by such person expressing the desire that, if at any time in the future he or she were to suffer from a terminal illness or terminal injury and be unable to express himself or herself, the maintenance medical treatment given to him or her may be withdrawn and the wish embodied in the declaration and power of attorney shall be given effect to by his physician or surgeon and the members of his family; and in such circumstances the physician or surgeon complying with the request made in the aforesaid declaration and power of attorney shall be free from any civil or criminal liability whatsoever.

**Petition
for with-
drawal of
main-
tenance
medical
treat-
ment.**

5. Where a physician or a surgeon in a hospital or an institution fails to give effect to the request of the patient, in the circumstances specified in sub-section (1) of section 3 that maintenance medical treatment may be withdrawn, the patient may file a petition in a District Court or in a court exercising similar jurisdiction in the form prescribed under this Act against such physician or surgeon praying for his wish to be carried out or for discharge from that hospital or institution and the Court shall give such relief to the petitioner as the Court may think fit.

**Petition
by ex-
ecutors of
patient.**

6. Where a physician or a surgeon fails to respond to the wishes of his patient as expressed in the declaration and power of attorney made earlier by the patient under section 4 the executors of the patient may file a petition in the form prescribed under this Act in a District Court or in a court exercising similar jurisdiction against the physician or surgeon praying that the wishes of the patient as expressed in the declaration and the power of attorney be given effect to and the Court shall give such relief to the petitioner as the Court may think fit

7. Where a newly-born infant suffers from *spina bifida* or Dawn's Syndrome or some other infirmity or incapacity and the parents of the child are of the view that the quality of life available to the child as he grows up will not be such as to make life worth living and that maintenance medical treatment should therefore be withdrawn, the physician or surgeon may, if he or she concurs in the parents' view, withdraw such treatment and in such a case the parent or the physician or surgeon shall be free from any civil or criminal liability.

With-
drawal of
treat-
ment in
case of
infants.

8. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power
to make
rules.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule shall not be made, the rule shall thereafter have effect, only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Thousands of people in this country are suffering from 'terminal illness' which will in all probability result in the expiration of life, there being either no cure of the disease at all or the treatment being not available in India. Such people wish to bring a dignified end to their miserable and pitiable existence—a burden to themselves and to the society—but are unable to do so for fear of attracting penalty at the hands of law.

To relieve such persons of their agony and suffering, the proposed legislation is desirable.

NEW DELHI;
March 8, 1985.

MOOL CHAND DABA

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill empowers the Central Government to make rules to carry out the purposes of the Bill. Since the rules will relate to matters of administrative detail only and prescribing of various forms, such as, the form of declaration and power of attorney under clause 4, form of petition under clause 5, etc., the delegation of legislative power is of a normal character.

BILL No. 85 OF 1985

A Bill to provide for abolition of public and private schools in India.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Public and Private Schools (Abolition) Act, 1985.

(2) It extends to the whole of India.

(3) It shall come into force on such date, within one year of the date of assent to the Bill, as the Central Government may, by notification in the Official Gazette, appoint.

2. Notwithstanding anything contained in any other law for the time being in force,—

(i) every school run by the Central Government or by any State Government or by any semi-Government organisation or by any other organisation or by any individual, either aided by the Government or owned by it partially or in full, on public school education system; and

(ii) every school run by any private organisation or individual; is hereby abolished.

Short title,
extent
and
com-
men-
ment.

Abolition
of public
and
private
schools.

Ban on
recognition of
public
or
private
schools.

Public
or
private
schools
certifi-
cates not
to be
recog-
nised,

3. No public school or private school shall be recognised by the Government or by any agency or authority constituted by the Government for the purpose of granting recognition to schools.

4. No educational certificate awarded by a public school or a private school shall be recognised by the Government or any of its agencies or institutions, educational or otherwise, for any purpose including admission to colleges or other institutions of higher education, or for establishing eligibility to enter into Government service.

STATEMENT OF OBJECTS AND REASONS

Public schools are out of place in a modern democracy and particularly in India where at least fifty per cent. of its population is living below the poverty line. These schools are the pockets of the privileged and are fed by the children of the aristocrats who can afford expensive education for their children. It is the birth and not the worth that determines the admission of the children to these schools. It is an anachronism to have such bureaucratic schools in a country which is wedded to classless society and universalisation of education.

The public schools in India have not made any material contribution to the educational progress of the country because the number of children whom they cater is microscopic. On the other hand, these schools turn out potential brown sahebs who suffer from arrogance. The students from these schools consider themselves a privileged class meant to rule others. They are cut off from the main currents of life and never learn through education of the problems and needs of the lowest strata of Indian society. Parents send their wards to the public schools not because of good education being provided there, but because of the fact that this education will provide them with handsome opportunities of employment against millions of their compatriots. The boys of public schools are selected for an administrative job not because they are highly gifted and original in approach, but because they fulfil questionable requirements prescribed by various selection boards. In fact what the country needs today is not the administrators only, which we already have in plenty, but the scientists, thinkers, technologists, doctors and writers who can give new direction to our stereotyped modes of doing things.

The public schools are a British legacy which was transplanted on our soil to produce polished tools of bureaucracy to perpetuate the British Raj. The objective was to produce a special class of people who could disown themselves and could expect the modes of life of their foreign rulers. This class felt intoxicated by the very fact that they were educated in an environment which was cut off from the main currents of life. But free India needs people who will gradually learn through education the problems of the people and needs of that common man who is the last in the queue.

The provision of special education to a few is a great hurdle in creating national consciousness. All students must, therefore, receive education under similar living conditions so that a national consciousness is kindled in them. We need not copy Western countries in every thing, much less in education. We should develop a system of Indian education to produce citizens responsive to the needs and problems of the common man.

Public schools in India are creating a gap within the society and day by day the gap is widening between the common man and the affluent. Every person of the privileged class is anxious to get his kid admitted in a

private school by paying huge sums which are demanded in the guise of donations. They charge exorbitant fees and expect the boys to be better dressed and the medium of teaching of all subjects is English. Thereby they create communities of the affluent elites. By destroying their own roots of origin the boys are alienated of their own people and remains so far the rest of their lives. It is precisely to avoid turning out of alienated and rootless young men that parents in developed countries have shunned the idea of public schools system. Yet in India, where we need consciousness to promote integration, the State continues to tolerate and assist special schools which turn out only snobs. The Government should, therefore, move fast in scrapping out the system of public school education.

The private schools are mushrooming everywhere in the country. These schools do not have proper facilities like laboratories, playgrounds, etc. The teachers employed in these schools are also not well qualified for the job. These schools do not contribute to the building of career of the students, but their sole aim is to earn money. Therefore, private schools run by individuals or organisations should also be abolished.

Hence this Bill.

NEW DELHI;
March 15, 1985.

SAIF-UD-DIN SOZ

BILL NO. 97 OF 1985

A Bill to provide for the payment of minimum wages and welfare of agricultural workers.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Agricultural Workers (Minimum Wages and Welfare) Act, 1985.
Short title, extent and commencement.
- (2) It extends to the whole of India.
- (3) It shall come into force at once.
2. In this Act, unless the context otherwise requires,—
Definitions.
 - (a) “authority” in relation to any State, means the authority appointed by the appropriate Government for the maintenance of land records from village or panchayat level to district level;
 - (b) “employer” means any person who employs, whether directly or through another person, whether on behalf of himself

or any other person, one or more workers in any work connected with the land, which he owns or is managing for somebody else;

(c) "wages" means remuneration, capable of being expressed in terms of money, which shall, if the terms of the contract of employment, express or implied, are fulfilled, be payable to a person employed in respect of his employment or for work done in such employment;

(d) "worker" means an agricultural worker who is landless and earns daily wages or wages on annual basis for working in agriculture.

Register of workers. 3. The authority shall maintain a register of agricultural workers of the area with such particulars and shall maintain the said register in such manner as may be prescribed by rules made under this Act.

Register of Employers. 4. The authority shall maintain a register of such employers of the area, who employ agricultural workers, with such particulars and shall maintain the said register in such manner as may be prescribed by rules made under this Act.

Authority to regulate service conditions of workers. 5. The authority shall regulate the service conditions of the workers as may be prescribed by rules made under this Act.

Punishment to unregistered employer. 6. If an unregistered employer engages any person in his land he shall be liable for prosecution and punishment.

Wages to be paid to the workers. 7. Every employer shall pay a minimum of rupees three hundred per month or rupees ten per day to a worker engaged by him for work at his land, which shall be subject to change in accordance with the rise in price index.

Counting of period of service of worker. 8. Every day of the work done by the worker shall be counted for the purpose of calculating the total period of service put in by the worker in a month or year.

Agri-cultural Workers Welfare Fund. 9. The Central Government shall constitute a Fund to be called the Agricultural Workers Welfare Fund.

Imposition of cess. 10. There shall be levied and collected as a cess, for the purposes of this Act, from each employer, at the rate of fifty paise per acre of land.

11. The proceeds of cess levied and collected under this Act shall first be credited to the Consolidated Fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Agricultural Workers Welfare Fund, from time to time, from out of such proceeds, after deducting the expenses on collection, such sums of money as it may think fit, for the welfare of workers.

Application of
proceeds
of cess.

12. There shall be formulated a scheme for providing pension-cum-provident fund facility to the worker when he becomes old and infirm.

Pension
and
provi-
dent
fund
facility
to
worker.

13. The authority shall submit to the Central Government such periodical returns, including a list of the workers of the area registered with the registering authority, within such intervals and with such particulars, as may be prescribed.

Auth-
ority to
submit
periodical
returns.

14. Every employer shall, before engaging any worker, notify his need of worker to the registering authority within whose jurisdiction his land is situated.

Empl-
oyer to
notify
his
need of
worker
to autho-
rity.

15. No employer shall reject a worker on the ground that he cannot perform a particular job.

Empl-
oyer not
to reject
worker.

16. There shall be an Advisory Council at Central and State levels, to advise the respective Governments on all problems arising from the implementation of this Act.

Advi-
sory
Council.

17. The authority shall give an unemployment allowance, in cash or kind, to every unemployed agricultural worker, whose name appears in the register maintained by the authority for this purpose.

Unem-
ployment
allow-
ance to
unem-
ployed
regis-
tered
workers.

18. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

Power to
make
rules.

STATEMENT OF OBJECTS AND REASONS

The agricultural workers in the country are the worst sufferers so far as wages are concerned. In fact they are not organised and are fully exploited by the land owners who do not pay them even the minimum wages. Moreover, these workers are asked to do all kinds of odd jobs, including domestic jobs after their day long labour in the field. There is no fixed time of work which goes to the advantage of the land owners. The result is that these workers are always underpaid, underfed and unemployed for most of the time of the year. There is no security of job, no old age provision and mostly they die in harness. It is, therefore, necessary that some kind of attention is paid to this lot of unfortunate citizens so that they too have some sort of human existence. Some protection is necessary, for their long service of the land, in the shape of pension and provident fund.

Hence this Bill.

NEW DELHI;

SATYAGOPAL MISRA

January 23, 1985.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274
OF THE CONSTITUTION OF INDIA

[Copy of letter No. H-11018/1/85-RW, dated 27 March 1985 from Shri T. Anjiah, Minister of State of the Ministry of Labour to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the above mentioned Bill, has accorded his recommendation, under articles 117(1) and 274(1) of the Constitution for introduction of the Bill; and under article 117(3) of the Constitution for consideration of the Bill in Lok Sabha.

FINANCIAL MEMORANDUM

With a view to ensuring that the Agricultural Workers Welfare Fund has necessary resources to discharge its functions, this Bill seeks to provide for levy of cess at the rate of fifty paisa per acre of land.

2. The proceeds of the aforementioned cess will be paid into the Consolidated Fund of India. Under clause 11 of the Bill the Central Government may, if Parliament, by appropriation made by law, in this behalf, so provides, pay to the said fund from time to time, out of such proceeds, after deducting the expenses on collection, such sums of money as the Government may think fit.

3. The collection of the aforementioned cess will involve some expenditure from the Consolidated Fund of India. It is not possible at this stage to estimate the amount of such expenditure.

4. Clause 3 of the Bill provides for the authority to maintain register of workers. Clause 4 of the Bill provides for the authority to maintain register of employers. Clause 9 of the Bill provides for the constitution of Agricultural Workers Welfare Fund. Clause 16 provides for the setting up of an Advisory Council at Central and State levels. Clause 17 provides for the payment of unemployment allowance by the authority to the unemployed registered workers. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees fifty lakhs per annum.

A non-recurring expenditure of about rupees ten lakhs is also likely to be incurred.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 of the Bill provides for the Central Government to frame rules for carrying out the purposes of the Act. Since the rules will relate to matters of detail only, the delegation of the legislative power is of a normal character.

BILL No. 100 OF 1985

A Bill to protect building and construction workers and to provide for their minimum wages, security of job, and such other health and welfare measures for them as are provided for in various labour and industrial laws in force in India.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Building and Construction Workers (Conditions of Employment) Act, 1985.

Short title, extent and commencement.
- (2) It extends to the whole of India.
- (3) It shall come into force at once.
2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

 - (a) “appropriate Government” means, in relation to any building or construction work, the State or the Central Government, whomsoever has jurisdiction over the site;

(b) "contractor" means a person who undertakes, whether as an independent contractor, agent, employee or otherwise, to produce a given result, for somebody, at the site;

(c) "employer" means the owner of the plot of land or building on which work of construction or repair or the like is going on, who employs one or more other persons to do any work for remuneration or otherwise and includes any person entrusted with the supervision and control of workers in such job, and the principal employer and the person who has the ultimate control over the affairs of any building or construction work or who has, by reason of his advancing money, supplying goods, or otherwise, a substantial interest in the control of the affairs of any such building or construction work, and includes any other person to whom the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name;

(d) "Fund" means the Building and Construction Workers Welfare Fund constituted under section 19;

(e) "local authority" means the Government officials appointed by the appropriate government to regulate, give permission to construction work, pass plan and designs for the construction work or the similar nature of work;

(f) "prescribed" means prescribed by rules made by the Government under this Act;

(g) "wages" for the purpose of this Act, means wages as defined in clause (rr) of section 2 of the Industrial Disputes Act, 1947;

14 of 1947.

(h) "worker" means any worker (including a woman) employed in any building or construction work to do any skilled or unskilled, manual, supervisory, technical or clerical work, for hire or reward, whether the terms of employment be express or implied;

(i) words and expressions used herein but not defined in this Act and defined in the Workmen's Compensation Act, 1923; the Industrial Disputes Act, 1947; the Minimum Wage Act, 1948; the Employees' State Insurance Act, 1948; the Contract Labour (Regulation and Abolition) Act, 1970; the Employers' Liability Act, 1938; the Equal Remuneration Act, 1976; the Fatal Accident Act, 1855; the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; the Maternity Benefit Act, 1961; the Payment of Bonus Act, 1965; the Payment of Gratuity Act, 1972; the Payment of Wages Act, 1936; The Personal Injuries (Compensation Insurance) Act, 1963; the Trade Unions Act, 1926; the Weekly Holidays Act, 1942; or similar other Labour Laws shall have the meaning respectively assigned to them in these Acts for the purpose of this Act also.

8 of 1923
14 of 1947
11 of 1948
34 of 1948
37 of 1970
24 of 1938
25 of 1976
13 of 1855
30 of 1979
53 of 1961
21 of 1965
39 of 1972
4 of 1938
37 of 1963
16 of 1926
18 of 1942

4. Before proceeding with any building and construction work, the plan and design of the said building and construction shall require approval, licensing and registration by appropriate authority, without which all building and construction work shall be deemed to be illegal. Prior approval, etc. of plan of construction.

5. Every employer and contractor shall give notice of building and construction work to the appropriate authority before commencing any work. Prior Notice.

6. There shall be provided a well-equipped Inspection staff to check any unauthorised building and construction activity and to enforce the provisions of this Act. Inspection staff.

7. The local authority shall maintain a register of construction and building workers of the area with such particulars and in such manner as may be prescribed by law. Register of construction workers.

8. The local authority shall also maintain a register of such employers and contractors who employ or are willing to employ construction and building workers in the area with such particulars and in such manner as may be prescribed by law. Register of employers.

9. Every employer and contractor shall register his name with the local authority of the area before engaging anybody in his work and initiating any construction and building work. Employer to register his name with the authority.

10. (1) Every employer and contractor who has not registered his name with the local authority shall not engage anybody in his work. Penalty.

(2) An employer or a contractor who contravenes the provisions of this section shall be punishable with fine which may extend to twenty five rupees.

11. Every building and construction worker shall be paid a minimum wage of Rs. 600 per month or Rs. 20 per day of work subject to adjustment in accordance with the rise in the Consumers' Price Index. Minimum wages to worker.

12. Every day of work done by a worker shall be counted as being continuously on the job for the purpose of total days worked by the worker in any year. Every day of work to be counted.

13. Employer and contractors having permanent and continuous work, in the same area or in other place or places, shall give permanent status to such of the workers who have completed 240 days of work either under him or under some other employers. Permanent status to workers.

Worker
not
to be
rejected
as unfit.

Notifica-
tion of
require-
ment of
workers.

Un-
employ-
ment
allowance
to
workers.

Insurance
of workers.

Welfare
measures
under
various
laws in
force.

Constitu-
tion of
Fund.

Levy of
cess.

14. No employer or contractor shall reject a worker on the ground that he is not fit or cannot perform a particular job.

15. Every employer and contractor shall, before employing any worker notify his requirement of workers to the registering local authority within whose jurisdiction his activity falls.

16. The appropriate Government shall pay, through the local authority an Unemployment allowance to every unemployed worker, whose name appears in the register maintained by the authority for this purpose, at the rate of Rs. 100 per month to an unskilled worker and at the rate of 150 per month to a skilled worker.

17. Every worker shall be insured, by the local authority, with the Life Insurance Corporation of India for a minimum of Rs. 25,000, the premium for which shall be paid by the authority regularly out of the Fund.

18. The local authority shall take all such welfare and health measures for the welfare of building and construction workers as are provided for in various labour and industrial laws in force in India.

19. (1) The appropriate Government shall constitute a Building and Construction Workers Welfare Fund to which shall be credited to the proceeds of cess levied under section 20.

(2) The Fund shall be utilised for—

(i) various welfare and health measures to be undertaken by the local authorities under section 18;

(ii) providing of pension-cum-provident fund facilities to workers.

(iii) payment of premium towards the life-insurance of workers as provided for under section 17.

(3) The appropriate Government shall provide out of the Fund such sums of money for the purposes of this Act to each local authority as may be determined by that Government in the manner prescribed by rules.

20. (1) There shall be levied by the appropriate Government and collected by the local authorities for the purposes of this Act a cess at the rate of two per cent of the total value of the building or construction work approved by a local authority in its area.

(2) The proceeds of the cess levied and collected under sub-section (1) shall be credited to the Fund constituted under section 19.

21. There shall be constituted an Advisory Council, at the Central as well as at the State levels, to advise the respective Governments on, all problems arising from the implementation of the provisions of this Act;

Constitution of Advisory Councils.

22. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the manner in which the register of construction workers shall be maintained;

(b) the manner in which the register of employers' and contractors shall be maintained;

(c) security of job and other measures as provided for in various labour and industrial laws in force in India;

(d) hours of work, daily interval for rest, spread-over of hours of work, split duty, notice of hours of work, weekly rest, compensatory day of rest, overtime wages for extra work, annual work, annual leave with wages and similar other matters;

(e) the manner in which the amount to be provided to each local authority out of the Fund shall be determined;

(f) any other matter which is required to be or may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions, aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The building and construction workers in the country are the worst sufferers so far as wages and working conditions are concerned. The system of Bonded Labour is the most common factor in the construction and building industry. The fact that these workers are not organised and are usually coming from distant and remote parts of the country is also the reason for their full exploitation by the building and construction employers. These workers are not being paid minimum wages; in fact they are not paid any regular wages but are given advances, which are adjusted against their due wages, and the process is never ending, resulting in their bonded existence. There is no fixed job for them and they are being asked to do all sorts of jobs, which mean no skilled status for them. There is no fixed working time for them. The result is that these workers are always underpaid, underfed, under bondage for most of the time of their lives. There is no security of job, no old age provision and mostly they die unsung, unwept and unnoticed. It is, therefore, necessary that some attention is paid to this lot of unfortunate citizens so that they too have some sort of human existence while they live and they have a respectable death when they die. Some protection is necessary during their long service in the shape of such provident fund, health and other welfare measures for them as are provided for in various labour and industrial laws in force in India. The time has come, therefore, that legislation is passed to achieve these objective soon.

Hence this Bill.

NEW DELHI;

January 23, 1985.

SATYAGOPAL MISRA

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. H-11018/2/85-LW, dated 27 March, 1985 from Shri T. Anjiah, Minister of State of the Ministry of Labour to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the Bill, has accorded his recommendation under article 117(1) and article 117(3) of the Constitution of India for introduction and consideration of the Bill in Lok Sabha.

FINANCIAL MEMORANDUM

Clause 6 of the Bill provides for provision of Inspection staff for enforcement of the provisions of the Bill, Clause 7 and 8 provide for maintaining of registers of construction workers and employees by the local authority. Clause 11 provides for payment of minimum wage of Rs. 600/- per month to workers. There are some Government departments who carry out construction work departmentally, e.g., C.P.W.D. and State P.W.Ds., who will also have to pay the minimum wages provide for in the Bill. Clause 16 provides for payment of unemployment allowance to workers by the appropriate Government. Clause 20 provides for levy of a cess for the purposes of the Bill, the collection of which will involve expenditure. Clause 21 provides for constitution of Advisory Councils at the Central as well as the State levels. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India on implementation of these provisions in the Union territories and at the same time towards making grants-in-aid to some extent to the States to meet a part of this expenditure. An annual recurring expenditure of about rupees eighty lakhs is estimated to be incurred from the Consolidated Fund of India on this account.

A non-recurring expenditure of about rupees twenty lakhs is also likely to be incurred for carrying out the purposes of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 22 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. Since the rules to be made will relate to matters of detail only which cannot be provided for in the Bill itself, the delegation of legislative power is of a normal character.

BILL NO. 104 OF 1985

A Bill to provide for reservation of posts in public sector and private sector services for economically weaker section of society

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Reservation of Posts in Public Sector and Private Sector Services (for Economically Weaker Section of Society) Act, 1985.

Short title, extent and commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Central Gazette, appoint.

2. In this Act,—

Definitions.

(a) "economically weaker section of society" means a class of persons, irrespective of the caste, whose income from all sources, including the income of the family members, does not exceed six thousand rupees per annum;

(b) "family" means and includes the husband, wife and minor children;

(c) "Public Sector Services" means services or posts in connection with the affairs of the Union and includes appointments in an undertaking owned or controlled by the Government of India or in an organisation carrying on any type of activity where fifty-one per cent. of its capital has been contributed in any form by the Government of India; and

(d) "Private Sector Services" means services or posts other than services or posts in public sector services.

3. Forty per cent. of the posts, under each category, in Public and Private Sector Services, in addition to the posts reserved for persons belonging to the Scheduled Castes and Scheduled Tribes and other backward classes under the Constitution, shall be reserved for candidates belonging to economically weaker section of society.

Reservation of posts for economically weaker section of society.

STATEMENT OF OBJECTS AND REASONS

Constitution of India gives protection to the Scheduled Castes and Scheduled Tribes in services of the Union and States. However, this protection is not mainly based on the economic conditions of the people. About 40 per cent. of the people are living below poverty line. It is, therefore, essential that those who are below poverty line are also protected in the matter of unemployment hether in Government, public or private sector so that this large chunk of population is not deprived of the constitutional protection, whose main intention is to uplift the economically weaker section of the society irrespective of the caste to which they may belong. Such a scheme will, in times to come, serve the twin objectives, namely, protect the poor and reduce the caste factor in the matter of employment.

This Bill seeks to achieve this objective.

NEW DELHI;

BALASAHEB VIKHE PATIL

April 10, 1985:

BILL No. 108 OF 1985

A Bill to provide for setting up a fund for the welfare of unorganised labour.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Unorganised Labour Welfare Fund Act, 1985. Short title and commencement.
2. In this Act, unless there is anything repugnant in the subject or context,—
 - (a) “contribution” means any amount credited to the Welfare Fund constituted under Section 3; Definitions.
 - (b) “employer” means any person who employs, whether directly or indirectly or through another person, or whether on behalf of himself or any other person, one or more employees who come within the definition of ‘organised labour’ given in clause (c) of this section;
 - (c) “organised labour” means and includes all labour unions which have been recognised by or under the authority of the Trade Unions Act, 1926;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "unorganised labour" means any class or person employed for hire or reward to do any work, skilled or unskilled, manual or clerical and includes any class of out-workers to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of trade or business of that other person where the process is to be carried out either in the home of the out-workers or in some other premises not being premises under the control and management of that other person and also includes agricultural labour; and

(f) "welfare fund" means the welfare fund set up for the welfare of unorganised labour under this Act.

Un-
organi-
sed
labour
welfare
fund.

3. The Central Government shall, by notification in the Official Gazette, create a fund to be known as Unorganised Labour Welfare Fund which shall be administered in such manner as the Central Government may prescribe.

Contri-
bution
by
members
of
orga-
nised
labour.

4. Every member of organised labour who is in receipt of total emoluments of not less than one thousand rupees per mensem, shall contribute one per cent. of his total emoluments to the welfare fund.

Contri-
bution
by
Central
Govern-
ment,
States
and
Union
terri-
tories.

5. The Central Government shall contribute to the welfare fund to the extent of Twenty five per cent. of the total annual contribution collected from the organised labour while every State and Union territory shall contribute to the extent of twenty-five per cent. of the total contributions collected in the respective State or Union territory.

Duty
of
employers.

6. It shall be the duty of every employer to deduct the amount referred to in section 4 from the emoluments paid to a member of organised labour and deposit the total amount so deducted to the welfare fund in the prescribed manner.

Utili-
sation
of
fund.

7. All moneys received in the welfare fund shall be utilised for the welfare of the unorganised labour in such manner as the Central Government may prescribe, with the purpose of organising such labour to come progressively within the purview of organised labour.

8. The Central Government shall have power to create posts and appoint persons to such posts in the prescribed manner for the proper administration of the welfare fund.

Power to create posts and make appointments.

9. (1) The Central Government shall, in consultation with the Government of the respective State or Union territory, as the case may be, also appoint advisory committee for every State and Union territory to advise the Central Government for administering the welfare fund.

Advisory Com. mittee.

(2) The terms and conditions of appointment of advisory committee and their members shall be such as may be prescribed by rules.

10. Whoever contravenes the provisions of this Act or the rules made thereunder shall, if he is an employer, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both; and if he is a member of organised labour for a term of ten days or with fine which may extend to twice the amount of contribution he is liable to pay under this Act.

Punishment.

11. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the manner for deducting the amount to be contributed by a member of organised labour under section 4 of this Act and for depositing it in the welfare fund by the employer;

(b) prescribe the manner for administering the welfare fund;

(c) prescribe the manner for utilisation of moneys received in the welfare fund;

(d) prescribe terms and conditions of persons appointed to administer the welfare fund;

(e) prescribe the mode and manner of constitution of State Advisory Committees and the terms and conditions of appointment of the members thereof; and

(f) provide for any other matter which is to be or may be prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

STATEMENT OF OBJECTS AND REASONS

For quite some time the minds of the legislators, public workers, leaders and other learned persons are agitated over the fact that although the organised labour; through its power of strike/agitation manages to get its demands, reasonable or unreasonable, fulfilled yet the unorganised labour which constitutes the major chunk of working classes in the country, feels helpless in getting its reasonable demands for minimum wages etc. fulfilled. It is, therefore, the duty of every member of organised labour class as well as of the Governments at the Centre, States and Union territories to contribute their mite to the welfare of unorganised labour.

The Bill seeks to provide for a modality through which organised labour class as well as the Governments at the Centre, States and Union territories are required to contribute to the welfare of their brethren scattered all over the country in an unorganised manner.

Hence this Bill.

NEW DELHI;

BALASAHEB VIKHE PATIL.

April 10, 1985.

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to create a fund for the welfare of unorganised labour. Clause 5 of the Bill provides that the Central Government shall contribute twenty-five per cent. of the total annual contribution collected from organised labour to the Unorganised Labour Welfare Fund. Clause 8 of the Bill empowers the Central Government to appoint persons to posts created by it for the proper administration of the fund. Clause 9 of the Bill provides for appointment of advisory committees for the States and Union territories to advise the Central Government for administering the welfare fund. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees ten lakhs per annum and non-recurring expenditure of rupees five lakhs per annum.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 empowers the Central Government to make rules for carrying out the purposes of the Act. The delegation of legislative power is of a normal character.

BILL No. 111 OF 1985

A Bill to empower the Central Government to take measures to promote and motivate small families in the country and put family planning measures on a statutory footing and for matters connected therewith.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Small Family (Promotion and Motivation) Act, 1985.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Central Gazette, appoint.

2. In this Act, unless, the context otherwise requires "small family" means a family consisting of the husband, wife and two children.

3. It is hereby declared that the provisions of this Act are for the purpose of giving effect to the policy of the State towards securing the principles laid down in article 38 of the Constitution of India.

Short title,
extent
and
com-
mence-
ment.

Defini-
tion.

Declar-
ation
as to
policy of
State.

Steps to
pro-
mote
and
moti-
vate for a
small
family.

4. (1) The Central Government shall take all steps including economic, educational, legal, medical and social to promote small family norms so as to check the growth of population in the country, achieve rapid economic progress and raise the standard of living of the people.

(2) The steps referred to in sub-section (1) may include all or any of the following:—

(a) laying down the small family norms;

(b) payment of incentives both monetary and material to those who practise family planning;

(c) giving of preference to persons practising family planning or adopting small family norms, in the matter of recruitment and promotion in services or posts in connection with the affairs of the State;

(d) advancement of loans and allotment of land, plot or house-site or built-houses by the States;

(e) giving educational facilities and scholarship or other financial assistance for prosecuting studies from secondary school level onwards.

Laying
of
Report
by the
Central
Govern-
ment
before
Parlia-
ment.

5. The Central Government shall lay on the Table of each House of Parliament an annual report containing the progress achieved in the implementation of the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The population of India is a growing phenomenon and to check its growth it is necessary that the problem should be tackled at all levels. The message of small family should not be confined merely to provide motivation to the eligible couples but the State should take every step economic, educational, legal, medical and social to control the growth of population in the country with a view to achieving rapid economic progress and raising the standard of living of people. The State should lay down the norms of small family and provide incentives, both monetary and material, to those who practise family planning and adopt small family norms. Preference should also be given to such persons in the matter of recruitment, promotion in Government, public or private sector services or posts, advancement of loans, allotment of land, plots or built houses, giving of educational facilities and scholarships or other financial assistance to encourage the youth of the country to practise family planning and follow small family norms so that adoption of small family becomes the way of life.

Hence this Bill.

NEW DELHI;

April 10, 1985.

BALASAHEB VIKHE PATIL,

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to provide that the Central Government shall take steps including economic, educational, legal, medical and social to promote small family norms, payment of incentives, advancement of loans, allotment of land, plot or house site or built houses, giving of educational facilities and scholarships to those who practice family planning, so as to check the growth in population of the country. It is difficult to estimate the precise financial implications at this stage. However to begin with it is expected that the Government would have to spend at least rupees twenty crores in the first year for the effective implementation of the family planning programme by adopting the measures suggested in the Bill. The expenditure will be met from the Consolidated Fund of India. As the programme accelerates and gathers momentum this amount will have to be increased and determined on year to year basis and provision for the purpose will have to be made in the Annual Budget. The provisions of the Bill do not involve expenditure of non-recurring nature from the Consolidated Fund of India.

BILL NO. 110 OF 1985

A Bill to provide for grant of financial assistance to political parties in connection with the election of their candidates, by the Central Government, for ensuring their effective functioning and promoting sound democratic polity and for matters connected therewith and incidental thereto.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Political Parties (Financial Assistance) Act, 1985. Short title, extent and commencement.
(2) It extends to the whole of India.
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In this Act, unless the context otherwise requires,— Definition.
 - (a) "Commission" means the Election Commission of India constituted under article 324 of the Constitution;
 - (b) "political party" means an association or body of individual citizens of India recognized by the Commission as a political party in accordance with the provisions contained in the Representation of the People Act, 1951.

(c) "prescribed" means prescribed by rules made under this Act.

Political
Parties
and can-
didates
not to
obtain
finan-
cial as-
sistance
from any
other
source.

3. (1) Notwithstanding anything contained in any other law for the time being in force, no political party and its candidates shall obtain any financial assistance for the purpose of meeting the expenses in connection with the election of its candidates except to the extent and in the manner prescribed by or under this Act.

(2) A political party which does not comply with the provisions of this Act and the rules made thereunder, shall not be granted financial assistance in any form, before or after the election, under this Act and, if already granted, shall be required to refund the same to the Central Government:

Provided that no action under this section shall be taken except on the recommendations of the Election Commission after giving the political party an opportunity of explaining its position.

4. (1) Every political party, recognised by the Commission, shall be granted by the Central Government such financial assistance as may be recommended by the Commission for the purpose of meeting the expenses in connection with the election of its candidates in elections to the House of the People or a Legislative Assembly of a State.

(2) In recommending the quantum of financial assistance which shall be granted to a political party, the Commission shall have regard to the number of votes polled by a political party in the last general elections to the House of the People or a Legislative Assembly of a State, the number of members on the register of a political party and such other factors as may be prescribed.

(3) The manner in which and the conditions subject to which such financial assistance shall be granted to a political party shall be such as may be prescribed.

Accounts
and
audit.

5. (1) Every political party to which financial assistance has been granted under section 4 shall prepare and maintain proper accounts and other relevant records in such form and manner as may be prescribed.

(2) The accounts of a political party shall be audited by an auditor authorised to audit the accounts of a company under the Chartered Accountants Act, 1949.

38 of 1949.

(3) Every political party which has been granted financial assistance under section 4 shall submit, within three months from the date of such grant or such extended period, to the Central Government, a certified copy of the audited accounts together with the audit report thereon.

(4) The Central Government shall prepare for every election a report on the financial assistance granted to the political parties.

(5) A copy of the report under sub-section (4) shall be laid before each House of Parliament.

Limit
on ex-
penditure
by a can-
didate of
a politi-
cal party.

6. Notwithstanding anything contained in the Representation of the People Act, 1951 and the rules made thereunder, no candidate set up by a political party to contest any election to the House of the People or the Legislative Assembly of a State, shall incur any expenditure in excess of the financial assistance received by him from his political party.

48 of 1951.

Provided that if any candidate incurs more expenses than the financial assistance received by him from his political party, he shall be disqualified for being or becoming a member of the House of the People or the Legislative Assembly of a State, as the case may be:

Provided further that before disqualifying a candidate under the preceding proviso, he shall be given an opportunity of being heard in the matter.

7. (1) The Central Government may, in consultation with the Commission, by a notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—

(a) the particulars to be contained in an application for the grant of financial assistance to a political party;

(b) the factors to be taken into account in granting the financial assistance;

(c) the manner in which, and the conditions subject to which, financial assistance shall be granted to a political party;

(d) the preparation and maintenance of accounts and other records under section 5;

(e) any other matter which is required to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is, made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree that the rule should be either modified or annulled, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Parliamentary democracy envisaged in the Constitution of India can develop and succeed only when the political parties in the country function in an orderly manner and under public scrutiny.

Creditability of political parties in the eyes of people has considerably been eroded. Most of the political parties, which are unable to bear the expenses of their candidates in the elections, adopt unhealthy methods and seek assistance from bodies/organisations in the country and outside the country. It is also found that the political parties and individual candidates seek money from the big business houses and multi-nationals. Such illegal practices encourage generation of black money and proliferation of small parties setting up their candidates thereby putting unnecessary burden on the public resources. The circulation of black money and influence of multi-nationals and big business houses in the elections cause a great set back to the smooth functioning of the Parliamentary democracy in the country. With a view to check these tendencies and to set a healthy practice, it will be necessary if the Government bears the expenditure incurred or to be incurred by a political party on its candidates for undertaking campaigning in the elections to the Lok Sabha or State Assemblies.

The Bill seeks to achieve this objective.

NEW DELHI;

BALASAHEB VIKHE PATIL

April 10, 1985.

FINANCIAL MEMORANDUM

The Bill seeks to provide financial assistance to political parties in respect of expenditure incurred by them for supporting their candidates to conduct their campaign as well as for the maintenance of minimum orderly functioning (Clause 4). It is difficult to estimate the precise financial implications at this stage. However, to begin with a recurring expenditure of rupees fifty crores will be required. The expenditure will be met from the Consolidated Fund of India.

The provisions of the Bill do not involve any expenditure of the non-recurring nature from the consolidated fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill empowers the Central Government to frame rules in consultation with the Election Commission. The matters for which the rules may be framed are the particulars to be contained in an application of a political party for the grant of financial assistance, factors to be taken into account for determining the quantum of financial assistance to be granted to a political party, etc. The delegation of legislative power, therefore, is of a normal character.

BILL No. 121 OF 1985

A Bill to provide for declaration of assets and liabilities by Members of Lok Sabha and Rajya Sabha and for matters connected therewith.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Declaration of Assets and Liabilities by Members of Lok Sabha and Rajya Sabha Act, 1985.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

(a) “assets”, in relation to any person, means,—

Definitions.

(i) his right, title or interest in immovable properties whether as owner, mortgagor, lessor, lessee or in any other manner whatsoever;

(ii) his right, title or interest in any business, trade or industrial or commercial venture or establishment or undertaking;

(iii) any sum of money in excess of five thousand rupees kept in the form of cash or travellers' cheque;

- (iv) bank balances;
- (v) fixed deposits with any bank or any company or other person;
- (vi) shares, stocks, debentures and other securities;
- (vii) motor vehicles as defined in the Motor Vehicles Act, 1939;
- (viii) insurance policies;
- (ix) jewellery other than rings, ear rings, bangles, mangalsutra, buttons, cuff-links, watches, watch straps and the like articles which a person normally wears every day; and
- (x) every other article, being movable, the value whereof, as on the date of acquisition of such article by such person, exceeds rupees five thousand;
- (b) "family", in relation to a member, means his or her,—
 - (i) spouse (not being a judicially separated spouse);
 - (ii) minor children; and
 - (iii) any other person related to him or her whether by blood or marriage and wholly or substantially dependent upon him or her;
- (c) "liability", in relation to any person, does not include liability to the extent of an amount not exceeding five thousand rupees;
- (d) "member" means a member of either House of Parliament;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "Presiding Officer" means,
 - (i) in relation to a member of the House of the People, the Speaker, House of the People;
 - (ii) in relation to a member of the Council of States, the Chairman, Council of States.

Duty
of
members
to
submit
decla-
ra-tions
of
assets
and
liabi-
lities.

3. (1) Every member shall, within a period of three months from the date of commencement of this Act, furnish to the respective Presiding Officer a declaration in the prescribed form setting out particulars of all his assets and liabilities and the assets and liabilities of members of his family as on such commencement.

(2) Every person, upon ceasing to hold office as member, shall furnish a like declaration of his assets and liabilities as on the date on which he ceases to hold such office, within three months from such date, to the respective Presiding Officer.

Annual
Declar-
ation of
Acquisi-
tions
and
dis-
posals.

4. Every member shall, throughout the term of his office, furnish, on or before the 30th day of June every year, to the respective Presiding Officer a declaration in the prescribed form of all assets acquired or disposed of or liabilities incurred by him or by any member of his family during the preceding financial year or, as the case may be, a nil declaration in the prescribed form.

4 of 1939.

5. Where any person, who has furnished a declaration under this Act, subsequently discovers any omission or mistake in such declaration, he may furnish a statement in the prescribed form to the respective Presiding Officer giving details of the correction he desires to be made.

Correc-
tions.

6. (1) The Presiding Officer of each House of Parliament shall, as soon as may be after the end of the period referred to in sub-section (1) of section 3, and, every year after the end of the period referred to in section 4, cause to be laid on the Table of the House all the declarations furnished to him under those sections and also the names of all persons who fail to furnish such declaration within time.

Laying
of
declar-
tions
and
state-
ments.

(2) Every declaration furnished under sub-section (2) of section 3 and every statement furnished under section 5 to the Presiding Officer of a House shall be caused to be laid by him on the Table of the House as soon as may be after it is furnished to him.

(3) If the Presiding Officer of a House of Parliament receives any declaration from any member who has failed to furnish the same within the period mentioned in section 3 or section 4, he shall, as soon as may be after he receives such declaration, cause the same to be laid on the Table of the House with a note that such declaration was received by him after the expiration of the said period.

7. (1) The Central Government may, by notification in the Official Gazette and after consultation with the Presiding Officers, make rules to give effect to the provisions of this Act.

Power to
make
rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the form in which declarations shall be furnished under section 3 and section 4;

(b) the form in which statements may be filed under section 5;

(c) the manner in which the forms and statements aforesaid shall be verified;

(d) the administrative arrangements with regard to the safe custody of, and other matters connected with, the form and statements furnished under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

For maintaining the purity of public life and for ensuring the confidence of the people with regard to the proper functioning of the democratic system, it is not enough if Members of Parliament function honestly and refrain from abusing their position. It is necessary for them to show that they are functioning honestly and that they have not abused their position to obtain any gains. For this purpose it is proposed to impose an obligation on every Member of Parliament to file declarations of assets and liabilities from time to time with the Presiding Officer of the House of which he is a member and for the laying of such declarations on the Table of the House.

2. The Bill seeks to achieve the above object.

NEW DELHI;
April 12, 1985.

RAJESH PILOT

FINANCIAL MEMORANDUM

The Bill seeks to impose an obligation on every Member of Parliament to file certain declarations and statements with respect to his assets and liabilities. Clause 7(2) (d) of the Bill empowers the Central Government to make by rules provision as to the administrative arrangements with regard to the safe custody and other matters connected with the aforesaid forms and statements. This will require some augmentation of the secretarial staff of the Lok Sabha and the Rajya Sabha. Further, it might be necessary to make provision for safes and other office equipment for the purpose of securing the safe custody of the said forms and statements. Expenditure will, therefore, be involved from the Consolidated Fund of India, in case the Bill is enacted. It is estimated that the expenditure on augmenting the secretarial staff of the Houses which will be of a recurring nature is not likely to exceed Rs. 2 lakhs per annum. The expenditure on safes and other office equipment will be of a non-recurring nature and is not likely to exceed Rs. 5 lakhs.

The provisions of the Bill do not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 3 and 4 of the Bill leave the forms in which the declarations are to be filed thereunder to be prescribed by rules. Clause 5 of the Bill likewise leaves the form in which statements may be filed under the clause to be prescribed by rules. Clause 7 of the Bill provides for the making of rules for giving effect to the provisions of the legislation and, in particular, for the various matters connected with the forms and statements aforesaid.

2. The matters in respect of which rules may be made pertain to matters of form, administrative detail or procedure and as such the delegation of legislative power is of a normal character.

BILL No. 127 OF 1985

A Bill further to amend the Employees' State Insurance Act, 1948.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Employees' State Insurance (Amendment) Act, 1985.

(2) It shall come into force at once.

Amendment of section 84.

2. In section 84 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the principal Act), for the words "which may extend to three months, or with fine not exceeding five hundred rupees, or with both", the words "which shall not be less than five years, or with fine which shall not be less than ten thousand rupees, or with both." shall be substituted.

Amendment of section 85.

3. In section 85 of the principal Act, for the brackets, letters and words beginning with the words "(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to six months but" and ending with the words "(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.", the following shall be substituted, namely:—

"(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to ten years; but—

(a) which shall not be less than five years, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages;

(b) which shall not be less than three years, in any other case.

and shall also be liable to fine which may extend to ten thousand rupees;

(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive) with imprisonment for a term which may extend to five years or with fine which may extend to ten thousand rupees, or with both."

4. In section 85A of the principal Act,—

(i) for the words "to one year, or with fine which may extend to two thousand rupees, or with both;", the words "to ten years, or with fine which may extend to fifteen thousand rupees, or with both;" shall be substituted;

(ii) in the proviso, for the words "which may extend to one year but which shall not be less than three months and shall also be liable to fine which may extend to four thousand rupees.", the words "which may extend to ten years but which shall not be less than five years and shall also be liable to fine which shall not be less than ten thousand rupees." shall be substituted.

Amend-
ment of
section
85A.

5. In section 85B of the principal Act, in sub-section (1), the proviso shall be omitted.

Amend-
ment of
section
85B.

6. In section 85C of the principal Act, in sub-section (2), for the words "one hundred rupees", the words "one thousand rupees" shall be substituted.

Amend-
ment of
section
85C.

7. In section 86 of the principal Act, to sub-section (3), the following proviso shall be added, namely:—

Amend-
ment of
section
86.

"Provided that if the complaint is not made, within six months of the date on which the offence is alleged to have been committed, by the Insurance Commissioner or by such other officer of the Corporation as may be authorised in this behalf by the Director General of the Corporation, the registered employees' union of the factory or establishment shall be competent to make the complaint".

STATEMENT OF OBJECTS AND REASONS

The Employees' State Insurance Act, 1948 was enacted to provide certain benefits to employees in cases of sickness, maternity, injuries during the course of employment and some other similar matters. The scheme was inaugurated on February 24, 1952. Since then the experience has shown that the employers adopt various means to avoid their responsibility in these matters. The Act provides for penalties in such cases but the employers prefer to pay the penalty as they prove cheaper than the compliance with the provisions of the Act. In order to make penalties adequate and deterrent, suitable amendments to the Act have become necessary.

The Bill seeks to achieve this objective.

NEW DELHI;
April 16, 1985.

BASUDEB ACHARIA

BILL NO. 123 OF 1985

A Bill further to amend the Constitution of India.

BE IT enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1985. Short title and commencement.
2. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Amendment of article 85.
3. In article 85 of the Constitution, in clause (2), in sub-clause (b), the words "only when so resolved by it" shall be added at the end. Amendment of article 85.
3. In article 105 of the Constitution, in clause (2),—
 - (i) after the words "shall be liable to", the words "be arrested or confined, obstructed or prevented or to" shall be inserted; Amendment of article 105.
 - (ii) after the words "anything said or", the words "done or" shall be inserted; Amendment of article 105.
 - (iii) after the words "him in Parliament", the words "or outside" shall be inserted; Amendment of article 105.

(iv) after the words "any committee thereof", the words "without prior permission of the Speaker of the House of the People or the Chairman of the Council of States, as the case may be" shall be inserted.

Amend-
ment of
article
174.

4. In article 174 of the Constitution, in clause (2), in sub-clause (b), the words "only when so resolved by it" shall be added at the end.

Amend-
ment of
article
194.

5. In article 194 of the Constitution, in clause (2),—

(i) after the words "shall be liable to", the words "be arrested or confined, obstructed or prevented or to" shall be inserted;

(ii) after the words "anything said or", the words "done or" shall be inserted;

(iii) after the words "him in the Legislature", the words "or outside" shall be inserted;

(iv) after the words "any committee thereof", the words "without prior permission of the Speaker of the Legislative Assembly of the State or the Chairman of the Legislative Council of the State, as the case may be" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The essential three parts of a democratic State are the independent Legislature, Judiciary and the Executive. The legislatures are headed by the Speakers of Parliament and the State Assemblies. The Judiciary is headed by the Chief Justices of the Supreme Court and High Courts. The President is the Executive head of the country and the Governors are the executive heads of the States. The powers of the heads of each are independent of the other and coterminous. Each is the final authority of its part. The Head of one part cannot intrude, interfere or override the other. On this basic principle of democracy, the amendments to the Constitution proposed in the Bill are necessary.

NEW DELHI;

May 6, 1985.

N. V. RATNAM

BILL No. 128 OF 1985

A Bill further to amend the Payment of Bonus Act, 1965.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

Short title and commencement.

Amendment of section 1.

1. (1) This Act may be called the Payment of Bonus (Amendment) Act, 1985.
(2) It shall come into force at once.
2. In section 1 of the Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act),—
 - (i) in sub-section (3),—
 - (a) for clause (b), the following clause shall be substituted, namely:—

“(b) every other establishment in which ten or more persons are employed on any day during an accounting year;”;
 - (b) in the proviso, for the words “less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten”, the words “less than

ten as may be specified in the notification, so, however, that the number of persons so specified shall in no case be less than five" shall be substituted;

(ii) in sub-section (5), for the words "falls below twenty", the words "falls below ten" shall be substituted.

3. In section 2 of the principal Act, for clause (13), the following clause shall be substituted, namely:—

Amend-
ment of
section 2.

'(13). "employees" means any person (other than an apprentice) employed on a salary or wage not exceeding three thousand rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.'

STATEMENT OF OBJECTS AND REASONS

The Payment of Bonus Act, 1965 applies *inter alia* to every establishment in which twenty or more persons are employed on any day during an accounting year. This provision deprives employees of those establishments where the number of employees is 10 or more of their fair share in the profits. This position needs to be changed.

Similarly, an employee whose monthly salary exceeds one thousand six hundred rupees per mensem is excluded from the purview of the benefits admissible under the Act. In view of the inflationary trend in the prices of essential commodities real value of rupee has been eroded. Moreover, the Payment of Bonus (Amendment) Act, 1985, has omitted section 12 of the Payment of Bonus Act, 1965, so that the bonus payable under the Act in the case of an employee whose salary or wages exceeds seven hundred fifty rupees per mensem is also calculated on the basis of his actual salary or wage. Logically, therefore, the maximum salary qualifying for bonus at rupees one thousand and six hundred per mensem also needs to be raised to rupees three thousand..

This Bill seeks to amend the Payment of Bonus Act, 1965, for the above purposes.

NEW DELHI;
May 10, 1985.

SHARAD DIGHE

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides that the provisions of the Payment of Bonus Act 1965 shall apply to every establishment in which ten or more persons are employed on any day during an accounting year. Clause 3 makes an employee whose salary or wage does not exceed rupees three thousand per mensem eligible to receive bonus. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees one crore per annum.

No non-recurring expenditure is likely to be involved.

BILL No. 124 of 1985

A Bill further to amend the Constitution of India.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1985. Short title and comment.
2. (a) In article 79 and wherever they occur in the Constitution,— Amendment of article 79.
 - (i) after the words “the Council of States”, the brackets and words “(Rajya Sabha)” shall be inserted; and
 - (ii) after the words “the House of the People”, the brackets and words “(Lok Sabha)” shall be inserted; and
- (b) In article 79, the words “and whose members shall be known respectively as ‘the member of Rajya Sabha’ and ‘the member of Lok Sabha’.” shall be added at the end.

STATEMENT OF OBJECTS AND REASONS

The words 'Rajya Sabha' and 'Lok Sabha' are universally accepted and denote the terms 'Council of States' and 'House of the People' but they have not yet been incorporated in the Constitution of India. The countries of the world denote their respective Houses in their own names.

The members of the Council of States and the members of the House of the People are commonly denoted by a single term Member of Parliament. Both Rajya Sabha and Lok Sabha are separate entities with their distinct existence, duties and purposes, though complementary to each other. To denote both of them by a common single denomination as M.P., blurs the edge of distinction and is likely to create some confusion regarding their respective purpose, duty and jurisdiction.

Denoting each by a distinct denomination conveys the connotation of the term easy, clear, and distinct to the mind of a common man, and hence this amendment is sought to denote the member of the Council of States (Rajya Sabha) as 'MEMBER OF RAJYA SABHA' and member of the House of People (Lok Sabha) as 'MEMBER OF LOK SABHA'.

NEW DELHI;
May 13, 1985.

N. V. RATNAM

BILL No. 126 OF 1985

A Bill to provide for a scheme for eradication of unemployment from the country.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Eradication of Unemployment Act, 1985. Short title, extent and commencement.
(2) It shall extend to the whole of India.
(3) It shall come into force at once.
2. In this Act,— Definitions.
 - (a) "Government" means the Central Government; and
 - (b) "prescribed" means prescribed by rules made under the Act.
3. The Government shall endeavour to provide every citizen who has attained the age of eighteen years and who is registered at the Employment Exchange with employment suited to his age, qualification and strength. Employment to all citizens.

Grant of
unem-
ployment
allowance.

4. Till such time as employment is provided to a citizen under section 3, he or she shall be entitled to an unemployment allowance as may be prescribed.

Unem-
ployment
Insurance
Scheme.

5. An Unemployment Insurance Scheme shall be started by the Government so as to provide for a special fund for the grant of unemployment allowance under this Act.

Contri-
bution to
Unem-
ployment
Insurance
Scheme.

6. A citizen who has registered himself at the Employment Exchange shall be eligible to receive benefit of unemployment allowance under this Act subject to his furnishing an agreement to contribute to the Unemployment Insurance Scheme for a prescribed period immediately after securing employment at a rate as may be prescribed.

Power to
make
rules.

7. (1) The Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for the following matters, namely—

(a) the rate of unemployment allowance referred to in section 4 and different rates may be prescribed on the basis of qualification and skills;

(b) the necessary details of the unemployment insurance scheme;

(c) the rate of contribution to the Unemployment Insurance Scheme under section 6;

(d) the procedure to regulate all payments under the Act;

(e) any other matter which is required to be; or may be, prescribed,

STATEMENT OF OBJECTS AND REASONS

The problem of unemployment has assumed menacing proportions. Even the educated citizens are rendered indigent. Lack of opportunity of employment in the country is also leading to brain drain and exodus of a large number of skilled and unskilled persons abroad. It is time that concerted efforts are made by the State to assure employment to the citizens of the country and to provide unemployment relief to those who have not been able to secure employment. It is also necessary to promote an unemployment insurance scheme for the purpose, so that the scheme may serve to finance the funds for the unemployment relief.

Hence the Bill.

NEW DELHI;

May 23, 1985.

G. M. BANATWALLA

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to provide unemployment allowance to the citizens who have attained the age of eighteen years or above. This provision involves a recurring expenditure of about one hundred crore rupees per annum from the Consolidated Fund of India. The recurring expenditure is expected to reduce substantially as and when employment is provided.

No non-recurring expenditure is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill empowers the Government to make rules for fixing the rate of unemployment allowance. Similarly, clause 6 empowers the Government to fix the rate of contribution to Unemployment Insurance Scheme.

Clause 7 empowers the Government to make rules for carrying out the provisions of the Bill. The matters in respect of which such rules may be made would relate to matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself.

The delegation of the legislative power is of a normal character.

BILL NO. 125 OF 1985

A Bill further to amend the Constitution of India.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1985. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After article 342 of the Constitution, the following new article shall be inserted, namely:— Insertion of new article 342A.

“342A. (1) There shall be a Commission for Women to be appointed by the President. Commission for Women

(2) The Commission shall consist of such persons as the President may appoint and the conditions of service and tenure of office of the persons so appointed shall be such as the President may by rules determine.

(3) It shall be the duty of the Commission—

(a) to investigate all matters relating to the safeguards provided for women under this Constitution and laws passed by the Union and State Governments;

- (b) to undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to women;
- (c) to look into specific complaints of deprivation of rights and safeguards and ill-treatment of women;
- (d) to suggest appropriate legal and welfare measures to be undertaken by the Union or the State Governments;
- (e) to submit to the President annually or at such other times as the Commission may deem fit, reports upon the working of those safeguards and status of women; and
- (f) to discharge such other functions in relation to welfare of women as the President may by rule specify.

(4) The President shall cause all such reports to be laid before each House of Parliament within three months of their receipt, along-with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for non-acceptance, if any, of any such recommendation.

(5) Where any such reports or any part thereof relates to any matters with which any State Government is concerned, a copy of such report, immediately on its receipt, shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State, within three months of its receipt by him, along-with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any such recommendation.

(6) For the purpose of holding any investigation, the Commission shall have the status and powers as may be prescribed.

STATEMENT OF OBJECTS AND REASONS

During the post-independence period, a number of laws have been enacted for the special problems of women. However, they have not helped women much. They remain depressed, deprived and disadvantaged. They continue to be victims of exploitation and abuse. There are innumerable instances of women being the victim of ever growing demand for dowry, marital maladjustments and even atrocities. Urban working women have their own special problems arising from the environment at, as also from commuting to, their places of work. With more and more women coming out for education and employment and in public life, we find them subject to increasing tensions, more problems and various kinds of harassments.

Joseph Minattur in his "Women and the Law" observes at page 178: "from a study of the ameliorative legal provisions relating to women and the actual situation in which they find themselves, it is clear that something more than legislation is required."

The Bill seeks to set up a multi-member Commission for Women, with a Constitutional status. It shall be the duty of the Commission constantly to review the implementation of the various laws enacted and policies pursued by the Union and the State Governments with respect to women and to suggest, from time to time various legal and welfare measures to be undertaken by them.

NEW DELHI;
May 24, 1985.

G. M. BANATWALLA

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to appoint a Commission for Women. The Commission will be a multi-member Commission. The provisions of the Bill will involve a recurring expenditure of about five lakh rupees per annum from the Consolidated Fund of India on account of salaries of the members of the Commission and the staff and other office expenses.

A non-recurring expenditure of about fifty thousand rupees is also likely to be involved in setting up of the office.

BILL NO. 129 OF 1985

A Bill further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

	1. This Act may be called the Marriage Laws (Amendment) Act, 1985.	Short title.
25 of 1955.	2. In the Hindu Marriage Act, 1955 (hereinafter referred to as the Hindu Marriage Act), in section 12, in sub-section (1), clause (a) shall be omitted.	Amendment of section 12.
	3. After section 12 of the Hindu Marriage Act, the following sections shall be inserted, namely:—	Insertion of new sections 12A and 12B.
	“12A. (1) A petition for annulment of marriage by a decree of nullity may be presented to the district court by either party to a marriage, whether solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1985 on the ground that the marriage has not been consummated for a period exceeding five years.	Annulment on the ground of non-consummation of marriage.

(2) The court hearing such a petition shall not hold the marriage to be null and void unless it is satisfied that the parties to the marriage have not consummated the marriage for a continuous period of not less than five years preceding the presentation of the petition.

(3) If the court is satisfied on all the evidence that the marriage has not been consummated for five years, it shall, subject to the provisions of this Act, grant a decree of nullity.

Wife's right to oppose the petition on the ground of hardship.

12B. (1) Where the wife is the respondent to a petition for the annulment of a marriage by a decree of nullity under section 12A, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and therefore it would in all the circumstances be wrong to annul the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 12A; and

(b) if apart from this section the court would grant a decree on the petition;

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of their children and other persons concerned, and if, the court is of opinion that the annulment of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to annul the marriage, it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship".

Insertion of new sections 13C, 13D and 13E.

Divorce on the ground of irretrievable breakdown of marriage.

4. After section 13B of the Hindu Marriage Act, the following sections shall be inserted, namely:—

"13C. (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage, whether solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1985 on the ground that the marriage has broken down irretrievably.

(2) The court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than seven years preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not

exceeding three months in all) during which the parties resumed living with each other, but no other period shall count as part of the period for which the parties to the marriage lived apart.

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

13D. (1) Where the wife is the respondent to a petition for the dissolution of a marriage by a decree of divorce under section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 13C; and

(b) if apart from this section the court would grant a decree on the petition;

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of their children and other persons concerned, and if, the court is of opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

13E. The court shall not pass a decree of divorce under section 13C unless it is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

Explanation.—In this section, the expression “children” means—

(a) minor children;

(b) unmarried or widowed daughters who have not the financial resources to support themselves; and

(c) children who, because of special condition of their physical or mental health, need looking after and have not the financial resources to support themselves.”.

5. In section 21A of the Hindu Marriage Act, in sub-section (1), after the word and figures “section 13”, at both the places where they occur, the words, figures and letter “or section 13C” shall be inserted.

6. In section 23 of the Hindu Marriage Act, in sub-section (1), in clause (a), after the word and figure “section 5”, the words, figures and letter “and except in cases where the petition is presented under section 13C” shall be inserted.

Wife's right to oppose the petition on the ground of hardship.

Restriction on decree for divorce affecting children.

Amendment of section 21A.

Amendment of section 23.

Amend-
ment of
section
25.

Insertion
of new
sections
25A and
25B.

Annul-
ment on
the
ground of
non-con-
summa-
tion of
marriage.

Wife's
right to
oppose
the peti-
tion on
ground of
hardship.

7. In section 25 of the Special Marriage Act, 1954 (hereinafter referred to as the Special Marriage Act), clause (i) shall be omitted.

43 of
1954.

8. After section 25 of the Special Marriage Act, the following sections shall be inserted, namely:—

“25A. (1) A petition for annulment of marriage by a decree of nullity may be presented to the district court by either party to a marriage [whether solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1985] on the ground that the marriage has not been consummated for a period exceeding five years.

(2) The court hearing such a petition shall not hold the marriage to be null and void unless it is satisfied that the parties to the marriage have not consummated the marriage for a continuous period of not less than five years preceding the presentation of the petition.

(3) If the court is satisfied on all the evidence that the marriage has not been consummated for five years, it shall, subject to the provisions of this Act, grant a decree of nullity.

25B. (1) Where the wife is the respondent to a petition for the annulment of a marriage by a decree of nullity under section 25A, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and therefore it would in all the circumstances be wrong to annul the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 25A; and

(b) if apart from this section the court would grant a decree on the petition;

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of their children and other persons concerned, and if, the court is of opinion that the annulment of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to annul the marriage it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.”.

Insertion
of new
sections
28A, 28B
and
28C.

9. After section 28 of the Special Marriage Act, the following sections shall be inserted, namely:—

"28A. (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage whether solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1985 on the ground that the marriage has broken down irretrievably.

Divorce on the ground of irretrievable breakdown of marriage.

(2) The court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than seven years preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months in all) during which the parties resumed living with each other, but no other period shall count as part of the period for which the parties to the marriage lived apart.

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

28B. (1) Where the wife is the respondent to a petition for the dissolution of a marriage by a decree of divorce under section 28A, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

Wife's right to oppose the petition on the ground of hardship.

(2) Where the grant of decree is opposed by virtue of this section, then--

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 28A; and

(b) if apart from this section the court would grant a decree on the petition,

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of their children and other persons concerned, and if, the court is of opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

Restriction on decree for divorce affecting children.

28C. The court shall not pass a decree of divorce under section 28A unless it is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

Explanation.—In this section, the expression “children” means,—

(a) minor children;

(b) unmarried or widowed daughters who have not the financial resources to support themselves; and

(c) children who, because of special condition of their physical or mental health, need looking after and have not the financial resources to support themselves.”.

Amendment of section 40A.

10. In section 40A of the Special Marriage Act, in sub-section (1), after the word and figures “section 27”, at both the places where they occur, the words, figures and letter “or section 28A” shall be inserted.

STATEMENT OF OBJECTS AND REASONS

In view of the demand from various quarters for making irretrievable breakdown of marriage a ground for divorce under the Hindu Marriage Act, 1955, Government referred the matter to the Law Commission for consideration. The Commission issued a questionnaire inviting views of interested parties and bodies on the salient points involved in the matter. After taking into account the replies to the questionnaire and after considering various aspects of the matter, the Commission recommended that irretrievable breakdown of marriage may be made a ground for divorce under the Hindu Marriage Act, subject to certain safeguards. The safeguards suggested by the Commission pertain to the minimum period for which the parties to the marriage should have been living apart and to the protection of the wife and of the children.

A Bill for achieving this object was introduced in Lok Sabha on the 27th February, 1981 and was referred to a Joint Committee of the Houses of Parliament. The Joint Committee toured the whole country and submitted its report to the Parliament in the year 1983 after inter-acting with public bodies, women's and voluntary social organisations, Bar Associations/Councils, Press, people's elected representatives and a cross section of the general public.

The Joint Committee had observed in its report that "unless the system of family courts is introduced all over the country and a suitable procedure (including the provision for marriage counselling services, consideration of matters by experts in the field of psychiatry, social behaviour, etc.) is devised, it would not be advisable to make the proposed new ground of divorce (i.e. irretrievable breakdown of marriage) a part of the law". Legislation providing for the establishment of family courts, namely, the Family Courts Act, 1984 was enacted by Parliament. This Act envisages a procedure involving the use of marriage counsellors and experts in the field *inter-alia* of psychiatry and social behaviour.

It was also suggested that the period of three years of living apart of the parties to the marriage was not adequate. Therefore, in the present Bill, the period of living apart of the parties to the marriage has been enhanced to seven years. Section 13(1) (vii) of the Hindu Marriage Act, 1955 provides for decree of divorce on the ground that the respondent has not been heard of as being alive for a period of seven years or more.

The rationale for providing irretrievable breakdown of marriage as a ground for divorce in the Hindu Marriage Act would be applicable with even greater force to the Special Marriage Act, 1954, as that Act proceeds on the basis that a marriage is essentially contractual in nature.

It is, therefore, proposed to amend the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 to provide for irretrievable breakdown of marriage as a ground for divorce there under subject to certain safeguards.

In the Indian ethos, an impotent person is considered 'incomplete', incapacitated and a freak. Society regards such a person to be incapable of leading a normal life. No self-respecting person would accept a life-long infamy of being declared impotent.

It can never be the aim of a welfare State to allow a citizen to be relegated to a position of being handicapped for life as a partner to a marriage. Therefore, it is cruelty to a person to be decreed impotent by a court.

Non-consummation of marriage arises from several causes and in almost every case it is psychological wherein, a person is either non-responsive or averse to the other party to the marriage. As such intimate facts are never revealed to the court, prolonged and painful litigation ensues with no result to either party.

Sexual responses are so relative that a person may be potent with one person and averse to another. Therefore, the requirement of "impotence of the respondent" or "wilful refusal of the respondent" is totally anachronistic, medically unscientific and socially inhuman.

A marriage could have remained un-consummated due to prolonged living apart, psychological repugnance *qua* each other, lack of adequate opportunities, family disputes, medical treatment, marriage counselling, or whatever reason. But as consummation is the very foundation of a marriage, it is futile to allow it to subsist without consummation for more than five years. Continuation of such a marriage is barbarous.

The Bill also envisages introducing a new provision for avoiding financial hardships to a wife.

It is also proposed to provide for annulment of marriage on the ground of non-consummation of marriage for a period exceeding five years.

The Bill seeks to achieve the above objectives.

NEW DELHI;
May 18, 1985.

DIGVIJAY SINH

SUBHASH C. KASHYAP,
Secretary-General.